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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
10

11 STEPHANIE ALEMAN M.,<sup>1</sup>

12 Plaintiff,

13 v.

14 LELAND DUDEK, Acting  
15 COMMISSIONER OF SOCIAL SECURITY,<sup>2</sup>

16 Defendant.  
17

Case No. 2:24-cv-01391-PD

**MEMORANDUM OPINION  
AND ORDER AFFIRMING  
COMMISSIONER**

18 Plaintiff challenges the denial of her application for Social Security  
19 disability insurance benefits (“DIB”) and supplemental security income  
20 benefits (“SSI”). For the reasons discussed below, the decision of the  
21 Administrative Law Judge is affirmed.  
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25 <sup>1</sup> Plaintiff’s name is partially redacted in line with Federal Rule of Civil  
26 Procedure 5.2(c)(2)(B) and the recommendation of the United States Judicial  
27 Conference Committee on Court Administration and Case Management.

28 <sup>2</sup> Leland Dudek, who was appointed Acting Commissioner on February 17,  
2025, is substituted in as the correct Defendant. *See* Fed. R. Civ. P. 25(d).

## I. PERTINENT PROCEDURAL HISTORY AND DISPUTED ISSUES

On January 24, 2020, Plaintiff protectively filed applications for DIB and SSI, alleging disability beginning February 9, 2018, from diabetes, neuropathy, “[d]iabetic retinopathy,” “bulging discs,” and sciatica. [Administrative Record (“AR”) 15, 318-19, 326, 350.] Plaintiff’s applications were denied initially and on reconsideration. [AR 117-18, 159-60.] She requested a hearing, which was held before an ALJ on May 4, 2022. [AR 32-53.] Plaintiff appeared with counsel, and the ALJ heard testimony from her and a vocational expert (“VE”). [AR 32, 36-52.] On February 15, 2023, the ALJ found Plaintiff not disabled under the Social Security Act (“SSA”). [AR 15-25.] Specifically, the ALJ determined that Plaintiff met the special earnings requirements through March 31, 2019, the date last insured (“DLI”). [AR 18.] The ALJ then followed the requisite five-step sequential evaluation process to assess whether she was disabled under the SSA. *See Lester v. Chater*, 81 F.3d 821, 828 n.5 (9th Cir. 1995) (as amended Apr. 9, 1996), *superseded on other grounds by regulation as stated in Farlow v. Kijakazi*, 53 F.4th 485 (9th Cir. 2022); 20 C.F.R. §§ 404.1520(a), 416.920(a).

At step one, the ALJ found that Plaintiff had not engaged in substantial gainful activity since February 9, 2018, the alleged onset date. [AR 18.]

At step two, Plaintiff had severe impairments of “degenerative disc disease of the lumbar and cervical spine,” neuropathy, diabetes, fibromyalgia, “adhesive capsulitis of the left shoulder,” “rotator cuff syndrome,” and “obesity status/post gastric surgery.” [Id.] She concluded that several of Plaintiff’s impairments, including her “cataract and diabetic retinopathy with macular edema,” were not severe. [AR 18-19.]

At step three, she found that Plaintiff’s impairments did not meet or equal any of the impairments in the Listing. [AR 19-20.]

1 At step four, Plaintiff had the RFC to perform light work except that  
2 she could

3 lift and/or carry 20 pounds occasionally and 10 pounds frequently;  
4 she c[ould] stand, walk, and sit each for six hours in an eight-hour  
5 workday; she c[ould] frequently reach, handle, finger, feel, push,  
6 and pull with the right, dominant upper extremity; she c[ould]  
7 occasionally reach, push, and pull with the left upper extremity  
8 and . . . frequently use her left hand for handling, fingering, and  
9 feeling; she c[ould] occasionally operate foot controls bilaterally;  
10 she c[ould] occasionally crouch and climb ladders, ropes, scaffolds,  
11 stairs, and ramps; she c[ould] frequently stoop, kneel, and crawl.

12 [AR 20.]

13 The ALJ concluded that Plaintiff was able to perform her past relevant  
14 work as a photographer. [AR 24.] Accordingly, she concluded that Plaintiff  
15 did not meet the SSA's definition of disability from the alleged onset date  
16 through the date of the decision. [AR 24-25.]

17 Plaintiff raises four issues:

18 (1) Whether the ALJ erred in finding that Plaintiff's visual  
19 impairments were nonsevere and warranted no work restrictions.

20 (2) Whether the ALJ properly evaluated the consultative internal-  
21 medicine examining doctor's statements.

22 (3) Whether the ALJ properly evaluated Plaintiff's subjective  
23 symptom statements and testimony concerning her diabetic polyneuropathy.

24 (4) Whether the ALJ properly resolved an apparent conflict between  
25 the VE's testimony and the Dictionary of Occupational Titles.

26 [See Dkt. No. 12 at 6-20.]

27 16-22.]

## 28 **II. STANDARD OF REVIEW**

Under 42 U.S.C. § 405(g), a district court may review the agency's  
decision to deny benefits. A court will vacate the agency's decision "only if the  
ALJ's decision was not supported by substantial evidence in the record as a

1 whole or if the ALJ applied the wrong legal standard.” *Coleman v. Saul*, 979  
 2 F.3d 751, 755 (9th Cir. 2020) (citations omitted). “Substantial evidence means  
 3 more than a mere scintilla but less than a preponderance; it is such relevant  
 4 evidence as a reasonable person might accept as adequate to support a  
 5 conclusion.” *Id.*; *Biestek v. Berryhill*, 587 U.S. 97, 103 (2019) (same).

6 It is the ALJ’s responsibility to resolve conflicts in the medical evidence  
 7 and ambiguities in the record. *Ford v. Saul*, 950 F.3d 1141, 1149 (9th Cir.  
 8 2020). When this evidence is “susceptible to more than one rational  
 9 interpretation,” the ALJ’s reasonable evaluation of the proof should be upheld.  
 10 *Ryan v. Comm’r Soc. Sec.*, 528 F.3d 1194, 1198 (9th Cir. 2008); *Tran v. Saul*,  
 11 804 F. App’x 676, 678 (9th Cir. 2020).

12 Error in Social Security determinations is subject to harmless-error  
 13 analysis. *Ludwig v. Astrue*, 681 F.3d 1047, 1054 (9th Cir. 2012). Error is  
 14 harmless if “it is inconsequential to the ultimate nondisability determination”  
 15 or, despite the legal error, “the agency’s path is reasonably discerned.”  
 16 *Treichler v. Comm’r Soc. Sec. Admin.*, 775 F.3d 1090, 1099 (9th Cir. 2014)  
 17 (citation omitted).

### 18 **III. DISCUSSION**

#### 19 **A. The ALJ Did Not Err in Finding Plaintiff’s Visual** 20 **Impairments Nonsevere and Warranting No Work** 21 **Restrictions**

22 Plaintiff argues that the ALJ erred in finding her visual impairments  
 23 nonsevere and in finding that they warranted no work restrictions. [Dkt. No.  
 24 12 at 6-10.] She contends that she “consistently exhibited poor visual acuity  
 25 in her left eye” despite receiving “regular intraocular injections in her eyes” to  
 26 treat “blurred vision and floaters resulting from her cataracts and diabetic  
 27 retinopathy with macular edema.” [*Id.* at 6.]

#### 28 **1. Applicable law**

At step two of the sequential evaluation process, a plaintiff has the

1 burden to present evidence of medical signs, symptoms, and laboratory  
2 findings that establish a medically determinable physical or mental  
3 impairment that is severe, and that can be expected to result in death or  
4 which has lasted or can be expected to last for a continuous period of at least  
5 twelve months. *See Ukolov v. Barnhart*, 420 F.3d 1002, 1004–05 (9th Cir.  
6 2005) (citing 42 U.S.C. §§ 423(d)(3), 1382c(a)(3)(A)); §§ 404.1520, 416.920.  
7 Step two is “a de minimis screening device [used] to dispose of groundless  
8 claims.” *Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996). An  
9 impairment or combination of impairments can be found “not severe” only if  
10 the evidence establishes a slight abnormality that has “no more than a  
11 minimal effect on an individual’s ability to work.” *Webb v. Barnhart*, 433 F.3d  
12 683, 686 (9th Cir. 2005) (citation omitted). The “severity requirement cannot  
13 be satisfied when medical evidence shows that the person has the ability to  
14 perform basic work activities, as required in most jobs.” SSR 85-28, 1985 WL  
15 56856, at \*3 (Jan. 1, 1985). Basic work activities include “walking, standing,  
16 sitting, lifting, pushing, pulling, reaching, carrying, or handling; seeing,  
17 hearing, speaking; understanding, carrying out, and remembering simple  
18 instructions; use of judgment, responding appropriately to supervision,  
19 coworkers, and usual work situations.” *Id.*

## 20           **2.     The ALJ’s Decision**

21         The ALJ noted that Plaintiff

22         testified that she received injections in her eyes every six weeks,  
23         to manage swelling, and while the medical record generally  
24         supports this testimony, in February 2022, she reported that she  
25         had not followed up “in a while.” She reported having blurred  
26         vision, floaters, and various associated functional limitations.  
27         In 2020, an internal medicine consultative examiner  
28         characterized [Plaintiff’s] visual acuity as “severely decreased” on  
the left, at 20/200, and “moderately decreased” on the right, at  
20/40. However, approximately one month later, a progress note  
from Win Retina indicated 20/30+1 acuity on the right and 20/70-  
2 on the left. Other optometry records suggest that [Plaintiff’s]

1 visual acuity varied, particularly on the left. An optometrist who  
2 examined [Plaintiff] in 2022 remarked that she had good central  
3 vision in her right eye, was not legally blind, and had good  
4 peripheral vision.

5 There is no indication that her visual impairments have more  
6 than a minimal effect on [Plaintiff's] ability to do basic work  
7 activities. For example, she testified that she was alone most of  
8 the time during the day and the internal medicine consultative  
9 examiner noted that she was able to "visually move around the  
10 office." Further, there is no indication that she used prescribed  
11 eyeglasses and she denied having any vision-related difficulty  
12 with driving. Occupational therapy records document improved  
13 visual function with various workarounds.

14 [AR 19 (citations omitted).]

### 15 **3. Analysis**

16 The ALJ properly found Plaintiff's visual impairments nonsevere [see  
17 AR 18-19] and not warranting work limitations [see AR 20-21]. The record  
18 documented that Plaintiff had a history of vision complaints [see AR 463-83]  
19 and was diagnosed with cataract and diabetic retinopathy with macular  
20 edema [see AR 483, 1044]. But her visual acuity varied, as the ALJ noted.  
21 [AR 19 (citing AR 577, 1045).] She was assessed "severely decreased" visual  
22 acuity in the left eye in September 2020, but her left-eye vision had improved  
23 significantly just a month later. [*Id.* (citing AR 577, 579, 1045).] In February  
24 2022 she was noted to have "good central vision in her right eye, was not  
25 legally blind, and had good peripheral vision." [*Id.* (citing AR 1259).] The  
26 same examiner found her vision "adequate for working." [AR 1259.]

27 Plaintiff's doctor certified to the DMV in a 2018 "Driver Medical  
28 Evaluation" that neither her vision nor the medications prescribed for it  
"affect[ed] safe driving." [AR 548.] In fact, Plaintiff herself testified that she  
didn't "have problems driving" [AR 40], as the ALJ noted [AR 19], and that it  
was "mainly" her back and foot pain that prevented her from working [AR 38].  
Indeed, the only visual functional limitations to which she points are her own

1 complaints of “trouble reading and watching TV.” [Dkt. No. 12 at 8.] But she  
2 does not show how those issues, even if fully credited, had “more than a  
3 minimal effect on [her] ability to work” as a photographer. *Webb*, 433 F.3d at  
4 686.

5 Plaintiff argues that even if her vision impairments were nonsevere, the  
6 ALJ erred in not considering their functional impact when formulating her  
7 RFC. [Dkt. No. 12 at 9.] But Plaintiff is incorrect that the ALJ did not do so.  
8 She discussed Plaintiff’s vision issues in her analysis of the RFC, including  
9 the findings of the internal-medicine consultative examiner [see AR 21], and  
10 found that they did not warrant any work limitations [AR 20].

11 Further, even if the ALJ erred in finding Plaintiff’s vision impairments  
12 nonsevere, any error was harmless. In light of Plaintiff’s concession that she  
13 had no “problems driving,” it appears that she “had at least the visual acuity  
14 necessary to take photographs,” as Defendant argues. [Dkt. No. 19 at 5.]  
15 Plaintiff does not identify what additional visual limitations the ALJ should  
16 have included, what evidence supports such limitations, or how those  
17 limitations would have prevented her from performing the photographer job.  
18 *See Burch v. Barnhart*, 400 F.3d 676, 683-84 (9th Cir. 2005) (finding that ALJ  
19 adequately considered impairment in RFC determination because plaintiff did  
20 not “point[] to any evidence of functional limitations due to [impairment]  
21 which would have impacted the ALJ’s analysis”). Plaintiff argues that the  
22 DOT “describes the duties of photographer as including the determination of  
23 subject-to-lens distance and adjusting focus, activities that would be disrupted  
24 by her left eye visual dysfunction.” [Dkt. No. 20 at 5.] She offers no support  
25 for this argument, but simply asserts that “one does not need to be a  
26 vocational expert to know that a professional photographer must be able to  
27 see well to ensure proper focus, lighting, and environmental contrast, which  
28 all affect the quality of the photographs.” *Id.* Plaintiff has identified no



1 medical opinion or other evidence suggesting that the level of visual  
 2 dysfunction she suffered prevented her from performing these tasks.  
 3 Therefore, any error was harmless. *See Molina v. Astrue*, 674 F.3d 1104, 1115  
 4 (9th Cir. 2012) (error is harmless when it is “inconsequential to the ultimate  
 5 nondisability determination” (citation omitted)), superseded on other grounds  
 6 by §§ 404.1502(a), 416.902(a)..

7 **B. The ALJ Properly Evaluated the Opinion of Consultative**  
 8 **Internist Seung Ha Lim in Fashioning the RFC**

9 **1. Applicable law**

10 An RFC is “an assessment of an individual’s ability to do sustained  
 11 work-related physical and mental activities in a work setting on a regular and  
 12 continuing basis.” SSR 96-8p, 1996 WL 374184, at \*1 (July 2, 1996). It  
 13 reflects the most a claimant can do despite limitations. *Smolen*, 80 F.3d at  
 14 1291. An RFC determination must be based on all the relevant evidence,  
 15 including diagnoses, treatment, observations, and opinions of medical sources,  
 16 such as treating and examining physicians. 20 C.F.R. §§ 404.1545, 416.945.  
 17 The ALJ is responsible for translating and incorporating supported medical  
 18 evidence into a succinct RFC. *Rounds v. Comm’r Soc. Sec. Admin.*, 807 F.3d  
 19 996, 1006 (9th Cir. 2015) (as amended). It is the ALJ’s responsibility to  
 20 resolve conflicts in the medical evidence and ambiguities in the record. *Ford*,  
 21 950 F.3d at 1149. When this evidence is “susceptible to more than one  
 22 rational interpretation,” the ALJ’s reasonable evaluation of the proof should  
 23 be upheld. *Ryan*, 528 F.3d at 1198.

24 The regulations for claims filed on or after March 27, 2017 apply here.  
 25 *See Revisions to Rules Regarding Evaluation of Medical Evidence*, 82 Fed.  
 26 Reg. 5844-01 (Jan. 18, 2017), 2017 WL 168819; 20 C.F.R §§ 404.1520c,  
 27 416.920c. These regulations provide that the ALJ will no longer “give any  
 28 specific evidentiary weight . . . to any medical opinion(s) . . .” *Revisions to*



1 *Rules* 82 Fed. Reg. 5844, at 5867-68, 2017 WL 168819; *see* 20 C.F.R.  
2 §§ 404.1520c(a), 416.920c(a). Instead, an ALJ must consider and evaluate the  
3 persuasiveness of all medical opinions or prior administrative medical  
4 findings from medical sources. 20 C.F.R. §§ 404.1520c(a) & (b), 416.920c(a) &  
5 (b). The factors for evaluating their persuasiveness include supportability,  
6 consistency, relationship with the claimant (including length of treatment,  
7 frequency of examinations, purpose of treatment, extent of treatment, and  
8 existence of an examination), specialization, and “other factors that tend to  
9 support or contradict a medical opinion or prior administrative medical  
10 finding” (including, but not limited to, “evidence showing a medical source has  
11 familiarity with the other evidence in the claim or an understanding of our  
12 disability program’s policies and evidentiary requirements”). 20 C.R.F.  
13 §§ 404.1520c(c)(1)-(5), 416.920c(c)(1)-(5).

14 Supportability and consistency are the most important factors when  
15 determining persuasiveness. *Woods v. Kijakazi*, 32 F.4th 785, 791 (9th Cir.  
16 2022). Supportability and consistency are explained in the regulations:

17 (1) Supportability. The more relevant the objective medical  
18 evidence and supporting explanations presented by a medical  
19 source are to support his or her medical opinion(s) or prior  
20 administrative medical finding(s), the more persuasive the  
21 medical opinions or prior administrative medical finding(s) will  
22 be.

23 (2) Consistency. The more consistent a medical opinion(s) or prior  
24 administrative medical finding(s) is with the evidence from other  
25 medical sources and nonmedical sources in the claim, the more  
26 persuasive the medical opinion(s) or prior administrative medical  
27 finding(s) will be.

28 §§ 404.1520c(c)(1)-(2), 416.920c(c)(1)-(2). The ALJ may, but is not  
required to, explain how the other factors were considered. §§  
404.1520c(b)(2), 416.920c(b)(2).).

1                                   **2. Dr. Lim's Statements**

2           On September 28, 2020, internist Seung Ha Lim conducted a  
3 consultative internal-medicine evaluation of Plaintiff. [AR 576-79.] Plaintiff  
4 complained of diabetes, back pain, and blurry vision in both eyes. [AR 576.]  
5 During the examination, her grip strength was 25 pounds with the right hand  
6 and 20 pounds with the left. [AR 577.] Otherwise, her strength was “5/5  
7 throughout without focal motor deficits.” [AR 578.] Her visual acuity was  
8 20/40 in the right eye and 20/200 in the left. [AR 577.] She exhibited a slow  
9 gait and complained of numbness of the lower extremities [AR 577-78] but  
10 didn't require use of an assistive device for ambulation [AR 579]. She had  
11 “normal range of motion of the back” but exhibited “pain on motion.” [AR  
12 578.] Her sensation was “decreased to soft touch in both lower extremities in  
13 stocking distribution.”<sup>3</sup> [Id.] She had an “absence of both ankle reflexes” [id.],  
14 which Dr. Lim opined “suggest[ed] diabetic neuropathy” [AR 579]. Dr. Lim  
15 noted that Plaintiff had “severely decreased visual acuity in the left eye and  
16 moderately decreased visual acuity in the right eye that did not improve with  
17 pinhole correction in the left eye.” [Id.] Dr. Lim further stated:

18           Based on available medical information, [Plaintiff], in my opinion,  
19 is restricted to standing and/or walking about 6 hours in an eight-  
20 hour workday with appropriate breaks. [She] would be able to sit  
21 for 6 hours in an eight-hour day with appropriate breaks. [She]  
22 would be able to lift and/or carry 20 pounds occasionally and 10  
23 pounds frequently. Pushing and pulling is limited to occasional  
24 use of both lower extremities. [She] has postural limitations such  
25 as occasional climbing and crouching. [She] has visual limitations  
26 in the left eye.

27           [Id.]

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28           <sup>3</sup> The stocking distribution, or stocking-and-glove pattern, in peripheral neuropathy from diabetes refers to symptoms often starting in the feet and toes, followed by the hands and fingers. *When Nerves Get Damaged*, Harvard Health Publ'g: Harvard Med. Sch. (July 6, 2024), <https://www.health.harvard.edu/diseases-and-conditions/when-nerves-get-damaged>.

1                               **3. The ALJ's decision**

2           The ALJ found Dr. Lim's

3           limitations on exertion, postural activities, and pushing and  
4           pulling . . . persuasive. Dr. Lim's objective findings support these  
5           limitations; for example, based on the height and weight he  
6           recorded, [Plaintiff's] body mass index . . . was 44.1. Similarly,  
7           there was pain on range of motion in her back, her gait was slow,  
8           and in both lower extremities, sensation was decreased and ankle  
9           reflexes were absent. Nonetheless, range of motion in [Plaintiff's]  
10          back and extremities was normal, motor function was intact, and  
11          no edema, cardiac, or pulmonary deficits were noted. Further, Dr.  
12          Lim's specific exertional, postural, and pushing/pulling  
13          limitations are consistent with other medical evidence as  
14          discussed below.

15          Dr. Lim indicated that [Plaintiff] had "visual limitations in the  
16          left eye," presumably based on the uncorrected visual acuity  
17          measurements of 20/40 on the right and 20/200 on the left.  
18          However, this conclusion is not persuasive, for several reasons.  
19          First, it is non-specific and thus has limited probative value.  
20          Moreover, [Plaintiff] denied wearing distance eye glasses and she  
21          was able to visually move around Dr. Lim's office. Finally, the  
22          medical evidence discussed in Finding 3 reasonably suggests that  
23          [Plaintiff's] visual impairments do not have more than a minimal  
24          effect on her ability to do basic work activities.

25          [AR 21 (citations omitted).]

26                               **4. Analysis**

27          Plaintiff is incorrect that the ALJ "did not provide a substantive  
28          discussion of her evaluation of the consistency factor" for Dr. Lim's opinion.  
[Dkt. 12 at 12.] The ALJ specifically stated that Dr. Lim's "exertional,  
postural, and pushing/pulling limitations [we]re consistent with other medical  
evidence as discussed below." [AR 21.] Plaintiff argues that this was  
insufficient because the ALJ didn't make any "specific findings in this regard."  
[Dkt. No. 12 at 12.] But the ALJ went on to discuss the "other" medical  
opinions she found consistent. Specifically, she noted that Drs. J. Berry and  
B. Vaghaiwalla opined that Plaintiff could engage in light exertion and

1 occasionally climb and operate foot controls, which is consistent with Dr.  
2 Lim's opinion. [AR 22 (citing AR 100-02, 132-35).]

3 Plaintiff argues that the ALJ failed to discuss the consistency factor  
4 with respect to the opined "visual limitations" in the left eye. [Dkt. No. 12 at  
5 12 (citing AR 21); see AR 579.] First, Dr. Lim's statement is not a medical  
6 opinion because it did not state "what [plaintiff] can still do despite [any]  
7 impairment(s) and whether [plaintiff] ha[s] one or more impairment-related  
8 limitations or restrictions" in her "ability to perform other demands of work,"  
9 §§ 404.1513(a)(2)(iii), 416.913(a)(2)(iii). Medical opinions no longer encompass  
10 "symptoms, diagnosis, and prognosis" as did former governing  
11 §§ 404.1527(a)(1) and 416.927(a)(1). Thus, the ALJ was not required to  
12 evaluate or even consider the statement. *See Melissa M. v. Comm'r Soc. Sec.*  
13 *Admin.*, No. 2:24-cv-00528-JR, 2024 WL 4948851, at \*2 (D. Or. Dec. 2, 2024)  
14 (noting that revised regulations "more narrowly define" medical opinions and  
15 finding that doctor's statement was "not a medical opinion because it d[id] not  
16 articulate any work-relevant functional limitations"); *Carl C. v. Comm. Soc.*  
17 *Sec.*, No. 2:21-cv-1454-DGE, 2022 WL 1134882, at \*7 (W.D. Wash. Apr. 18,  
18 2022) (finding that speech pathologist's statement was "not a medical opinion"  
19 under §§ 404.1513(a) and 416.913(a) "as it did not describe [p]laintiff's  
20 impairments or what he could still do despite his impairments").

21 Further, even if Dr. Lim's statement had been a medical opinion, the  
22 ALJ sufficiently addressed the consistency factor. In finding that statement  
23 not persuasive, the ALJ noted that the "medical evidence discussed in Finding  
24 3 reasonably suggests that [Plaintiff's] visual impairments do not have more  
25 than a minimal effect on her ability to do basic work activities." [AR 21.] It  
26 was acceptable for the ALJ to reference other portions of her decision in  
27 explaining her consideration of Dr. Lim's opinion. *See Magallanes v. Bowen*,  
28 881 F.2d 747, 755 (9th Cir. 1989) (ALJ not required to recite "incantation"

1 such as “I reject [this doctor’s] opinion about [this issue] because . . .”).

2 Plaintiff argues that instead of “disregarding” Dr. Lim’s statement, the  
3 ALJ was required to “translate the terms . . . based on a reasonable  
4 interpretation of their meaning given the context of the report.” [Dkt. No. 12  
5 at 13.] But this isn’t a case in which the doctor used a worker’s-compensation  
6 term to describe the degree of accommodation required in language different  
7 from Social Security terms. Dr. Lim’s statement that Plaintiff had “visual  
8 limitations in the left eye” does not opine that those limitations affected her  
9 ability to work or required any accommodations at all to do so. There was  
10 nothing for the ALJ to translate.

11 Plaintiff argues that the ALJ “should have recontacted [Dr. Lim] for  
12 further elaboration.” [Id.] When determining disability, the ALJ has a “duty  
13 to fully and fairly develop the record and to assure that the claimant’s  
14 interests are considered.” *Garcia v. Comm’r Soc. Sec.*, 768 F.3d 925, 930 (9th  
15 Cir. 2014) (citation omitted). An ALJ’s duty to develop the record is triggered  
16 “when there is ambiguous evidence or when the record is inadequate to allow  
17 for proper evaluation of the evidence.” *Mayes v. Massanari*, 276 F.3d 453,  
18 459-60 (9th Cir. 2001) (as amended).

19 But “when claimants are represented by counsel, they must raise all  
20 issues and evidence at their administrative hearings in order to preserve  
21 them on appeal,” and courts will excuse failure to do so only “when necessary  
22 to avoid a manifest injustice.” *Meanel v. Apfel*, 172 F.3d 1111, 1115 (9th Cir.  
23 1999) (as amended); *see Sanchez v. Berryhill*, No. 1:15-cv-00510-EPG, 2017  
24 WL 1709326, at \*3 (E.D. Cal. May 3, 2017) (“A manifest injustice is . . . an  
25 error in the trial court that is direct, obvious, and observable[.]” (citation  
26 omitted)). Plaintiff was represented by counsel at the hearing. [See AR 32.]  
27 The ALJ specifically asked whether the record was complete, and counsel  
28 responded that he had requested records from Orange County Foot & Ankle

1 and “other than that, the record is complete.” [AR 35-36.] And Plaintiff did  
2 not raise the issue to the Appeals Council. [See AR 299-301.] Thus, Plaintiff  
3 has waived her argument that the ALJ erred by not recontacting Dr. Lim. See  
4 *Meanel*, 172 F.3d at 1115; see also *Juan R. v. Kijakazi*, No. 2:20-CV-11257-  
5 GJS, 2022 WL 3018056, at \*3 (C.D. Cal. July 29, 2022) (explaining that  
6 “courts have determined that when counsel represents a claimant at the  
7 hearing and indicates the record is ‘complete,’ the claimant waived any  
8 challenge that the ALJ erred by not developing the record”; collecting cases).  
9 And no manifest injustice arises from finding waiver here because, as  
10 explained earlier, Plaintiff has not presented any evidence of specific  
11 limitations arising from her left-eye condition.

12 For all these reasons, the ALJ did not err in evaluating Dr. Lim’s  
13 opinion.

14 **C. The ALJ Properly Evaluated Plaintiff’s Subjective**  
15 **Symptom Statements and Testimony Concerning Her**  
16 **Diabetic Polyneuropathy**

17 **1. Applicable Law**

18 In the absence of proof of malingering, an ALJ may reject a litigant’s  
19 statements and testimony by identifying “specific, clear, and convincing”  
20 reasons supported by substantial evidence. *Trevizo v. Berryhill*, 871 F.3d 664,  
21 678 (9th Cir. 2017) (as amended). This requires the ALJ to “specifically  
22 identify the testimony [from a claimant] she or he finds not to be credible and  
23 . . . explain what evidence undermines that testimony.” *Lambert v. Saul*, 980  
24 F.3d 1266, 1277 (9th Cir. 2020) (quoting *Treichler*, 775 F.3d at 1102); see also  
25 *Brown-Hunter v. Colvin*, 806 F.3d 487, 493 (9th Cir. 2015) (as amended). An  
26 ALJ may consider a variety of factors in analyzing the believability of a  
27 claimant’s symptom testimony, including “ordinary techniques of credibility  
28 evaluation.” *Burch*, 400 F.3d at 680; *Evans v. Berryhill*, 759 F. App’x 606, 608  
(9th Cir. 2019) (same). A court must “review only the reasons provided by the



1 ALJ in the disability determination and may not affirm the ALJ on a ground  
2 upon which [s]he did not rely.” *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir.  
3 2007). Courts, therefore, may not speculate on the basis for unexplained  
4 conclusions but rather must consider only the reasoning actually given by the  
5 ALJ. *See Burrell v. Colvin*, 775 F.3d 1133, 1138 (9th Cir. 2014).

6 An ALJ can consider whether a lack of objective medical evidence  
7 supports a claimant’s allegations, but that “cannot form the sole basis” for  
8 discounting subjective symptom testimony. *Burch*, 400 F.3d at 681; *Davis v.*  
9 *Berryhill*, 736 F. App’x 662, 665 (9th Cir. 2018). If an ALJ impermissibly  
10 relies “on one of several reasons in support of an adverse credibility  
11 determination,” the error is harmless if “the ALJ’s remaining reasoning and  
12 ultimate credibility determination were adequately supported by substantial  
13 evidence in the record.” *Carmickle v. Comm’r, Soc. Sec. Admin.*, 533 F.3d  
14 1155, 1162 (9th Cir. 2008) (citation and emphasis omitted).

## 15 **2. Plaintiff’s Subjective Symptom Statements and** 16 **Testimony**

17 In a March 7, 2020 Exertion Questionnaire, Plaintiff stated that she  
18 lived in a house with family. [AR 381.] She “tr[ied] to walk” but “d[id]n’t  
19 really know how far [she] could walk” and “ha[d] to take breaks in between.”  
20 [Id.] She could climb stairs but got “out ove [sic] breathe [sic]” and “tr[ied] to  
21 only go up the stairs once a day.” [AR 382.] She could lift “nothing heavy.”  
22 [i.] She did her own grocery shopping alone when getting “something for that  
23 day,” but her husband went with her when she shopped “for the week.” [i.]  
24 She cooked at home, but it took her three hours. [Id.] She was able to  
25 “sweep,” but it “t[ook her] a while” because of her wrist, shoulder, and leg.  
26 [Id.] She took her child to school, or her child would drive and Plaintiff would  
27 drive home alone. [Id.] She watered her plants “if not to [sic] cold,” as the  
28 “cold bother[ed her] back and left leg & side.” [Id.] She slept seven hours, but  
“most of the time [she was] just laying [sic] in bed.” [AR 383.] Whether she

1 required rest or naps during the day “depend[ed] on how cold” it was because  
2 her “left side hurt[] and burn[ed].” [*Id.*] She used a brace when it was cold or  
3 when her back hurt. [*Id.*] Her left side burned, her back bothered her, and  
4 her “hand & wrist hurt.” [*Id.*] She couldn’t get comfortable because of her left  
5 shoulder and leg. [AR 384.] In a December 3, 2020 Disability Report,  
6 Plaintiff stated that she had been “using [a] cane since 10-29-2020.” [AR 388.]

7 In a December 27, 2020 Exertion Questionnaire, Plaintiff stated that  
8 her left side “always fe[lt] like” it was “on fire.” [AR 396.] Her lower back  
9 hurt “a lot,” and her right hands and wrists hurt. [*Id.*] Her “feet up to [the]  
10 middle of [her] calf” were “numb and so [were her] hands.” [AR 396, 398.]  
11 She couldn’t “keep a straight line while writing” if she took her medications  
12 during the day. [AR 398.] She “just want[ed] to sleep and not do anything  
13 [but] just stay in [her] bed.” [*Id.*] She was “always tired” and didn’t “want to  
14 do anything.” [*Id.*] She didn’t “do much around the house,” but she did “try to  
15 wash dishes, sweep and wash clothes but it t[ook] all day,” so “most of the  
16 time” her “daughter help[ed her].” [AR 396.] She “use[d] a cane to walk  
17 around,” and her “therapist told [her] to use” it so she wouldn’t “fall and lose  
18 [her] balance.” [*Id.*] She “use[d] the basket for support” at the store. [*Id.*]  
19 She climbed stairs “only once . . . to gat [sic] to sleep,” and “half way up [she  
20 was] sometimes out of breath.” [AR 397.] She did her own grocery shopping,  
21 but someone went with her so she was “not carrying anything heavy.” [*Id.*]  
22 She cleaned her own home, but her daughter helped her “finish what [she]  
23 d[id]n’t finish.” [*Id.*] She “sometimes” watered her plants “just to get out and  
24 feel the sun . . . for a few minutes” because she “g[o]t cold and [her] leg & back  
25 hurt.” [*Id.*] She had difficulty finishing her housework because she would “sit  
26 and then not want to get back up to finish,” as her back and the “left side of  
27 [her] body [were] not wanting to get up.” [AR 399.] She slept between four  
28 and five hours and “toss[ed] and turn[ed] most of the night.” [*Id.*] She

1 “sometimes” needed rest periods or naps during the day. [*Id.*] She used a  
2 cane to walk “to avoid . . . losing [her] balance” and used a brace on her right  
3 hand when her “hand and wrist hurt a lot [m]ybe [sic] 2-3 weeks at a time.”  
4 [AR 399-400.] The left side of her body “just burn[ed] all day & night and  
5 [her] back really bother[ed her] and so [did her] right hand & left arm.” [AR  
6 399.]

7 In a January 7, 2021 Exertional Questionnaire, Plaintiff’s answers were  
8 essentially unchanged. She stated that her feet and hands were numb, it was  
9 “hard to put [on] and take off [her] bra,” and someone helped her do it. [AR  
10 401-02.] She didn’t “do much around the house” but tried to “wash dishes,”  
11 “sweep,” and “wash clothes.” [AR 401.] She didn’t fold laundry. [*Id.*] It took  
12 “all day” to do the dishes, sweeping, and clothes, and she sat and took breaks.  
13 [*Id.*] She didn’t “do much lifting” and “always carr[ied] the bag that ha[d] less  
14 in it so [she] ha[d] a lot of bags.” [AR 403.] She could carry “not much and not  
15 far.” [*Id.*] She tried to go to the grocery store “every three days” with  
16 someone. [*Id.*] She tried to water her plants outside “every three days.” [*Id.*]  
17 She had difficulty finishing housework because she “worried [she] w[ould]  
18 drop something and . . . loose [sic] balance and fall.” [AR 404.] She found it  
19 “very hard to do everyday things like put on a bra [and] tie [her] shoes.” [AR  
20 405.] Her left shoulder, left thumb, right wrist, and lower back hurt. [*Id.*]  
21 The numbness in her feet and hands made it “hard to function.” [*Id.*]

22 In a March 4, 2021 Disability Report, Plaintiff stated that she “f[ou]nd  
23 [her]self using the cane more often[] and going to physical therapy.” [AR 409.]  
24 She had a growth on both feet. [*Id.*] She didn’t go for walks anymore because  
25 she was “afraid to fall or loose [sic] balance.” [AR 415.] She took a long time  
26 to finish household tasks because she was “taking a lot of breaks,” and “at the  
27 end of the day” she was “just exhausted with doing the bare minimum.” [*Id.*]  
28 She “experience[d] a lot of pain and [a] burning sensation in [the] left side of

1 the body.” *[Id.]*

2 Plaintiff testified at the May 2022 hearing that she had swelling inside  
3 her eyes and received a shot in each eye “every six weeks to control the  
4 swelling so that [she] d[id]n’t lose [her] eyesight.” [AR 38.] But it was “back  
5 pain” “and [her] foot” that “mainly prevented [her] from continuing to work.”  
6 *[Id.]* She had “something on [her] foot that [she] c[ould]n’t stand very long,”  
7 and she “c[ould]n’t sit very long.” *[Id.]* If she was sitting on a chair that  
8 didn’t have a cushion, she had to “get up and move around, and then . . . sit  
9 back down.” *[Id.]* Then she would “get up and move around.” *[Id.]* The “pain  
10 [was] just too much” as it related to her back. *[Id.]* She lived in a house with  
11 stairs, but she “only [went] up once and c[a]me down once” a day. [AR 39.]  
12 She came down in the morning and went “back up when [she was] ready to go  
13 to bed.” *[Id.]* She hung onto the rail and went up “very carefully” because she  
14 had “slipped twice.” *[Id.]* Her husband and three grown children lived with  
15 her. *[Id.]* She drove herself when she had to go to the doctor’s office and there  
16 was “nobody [t]here and it [was] close by.” [AR 39-40.] But someone “usually”  
17 took her. [AR 40.] She had no problems driving, but she couldn’t drive herself  
18 back when she needed to get shots in her eyes. *[Id.]*

19 She had a “mass at the bottom of the arch” of her foot that was “bulging  
20 out.” [AR 41.] When she wore shoes, it “bother[ed her] because” it “rubb[ed]  
21 up on the . . . shoe . . . every time [she] walk[ed], every time [she] move[d].”  
22 *[Id.]* Her foot was swollen, and the left side of her body was “always on fire.”  
23 *[Id.]* The mass on her foot was “getting bigger.” [AR 42.]

24 She also had problems with her hands and back and was “recently  
25 diagnosed” with fibromyalgia. *[Id.]* She had neuropathy in her hands and  
26 feet. *[Id.]* The left side of her body was “always more swollen than the right.”  
27 [AR 43.]

28 She could stand for “maybe half an hour” before needing to sit. *[Id.]*

1 How long she needed to sit depended on what kind of chair it was. [*Id.*] She  
2 could sit for half an hour “give or take.” [*Id.*] She used a cane “most of the  
3 time to walk” because she “tend[ed] to kick the floor sometimes” and “take a  
4 dive.” [AR 44.] She used a cane to “make sure that [she] d[id]n’t lose [her]  
5 balance.” [*Id.*]

6 She first testified that she didn’t do household chores but clarified that  
7 “[i]f [she did], it t[ook] . . . all day” or “a while” to do them. [AR 45.]  
8 Showering and dressing took “a little longer . . . because of [her] back  
9 situation.” [AR 46.] It took a “long time to take the bra off, put it back on; put  
10 the pants on, take them off.” [*Id.*] It was the “[s]ame thing with socks.” [*Id.*]  
11 “Shoes . . . t[ook] a longer time.” [*Id.*]

### 12 3. The ALJ’s Decision

13 The ALJ found that Plaintiff’s

14 medically determinable impairments could reasonably be  
15 expected to cause the alleged symptoms. However, [her]  
16 statements concerning the intensity, persistence and limiting  
17 effects of these symptoms [we]re not entirely consistent with the  
18 medical evidence and other evidence in the record.

19 [AR 21.] She partially discounted Plaintiff’s subjective symptom  
20 statements and testimony because they were inconsistent with the objective  
21 medical evidence, her conservative treatment, her noncompliance with  
22 treatment recommendations, and her improvement with treatment. [See AR  
23 22-24.]

### 24 4. Analysis

25 Plaintiff contends that the ALJ did not properly evaluate her  
26 statements and testimony concerning her diabetic neuropathy. [Dkt. No. 12  
27 at 14-18.] She does not challenge the ALJ’s evaluation of her statements and  
28 testimony concerning her other impairments. The ALJ did not err..]

**a) Objective Medical Evidence**

The ALJ properly discounted Plaintiff's subjective symptom statements and testimony because they were at least in part inconsistent with the objective medical evidence. *See Kitchen v. Kijakazi*, 82 F.4th 732, 739 (9th Cir. 2023) (ALJ's conclusion that objective medical evidence was inconsistent with plaintiff's symptom statements was specific, clear, and convincing reason for discounting his statements). "After careful consideration of the entire record," the ALJ found some of Plaintiff's subjective symptom statements and testimony unsupported by and inconsistent with that evidence. [AR 20; see AR 21-24]; *see also Bell-Shier v. Astrue*, 312 F. App'x 45, 49 (9th Cir. 2009) (upholding ALJ's rejection of plaintiff's pain and limitation claims when ALJ "examine[d] the entire record").

During Dr. Lim's September 28, 2020 consultative internal-medicine evaluation, Plaintiff's range of motion in the back and extremities was normal, and motor function was intact. [AR 21 (citing AR 578).] Her grip strength was 25 pounds with the right hand and 20 pounds with the left [AR 577], but otherwise her strength was "5/5 throughout without focal motor deficits" [AR 578]. In May 2021, neurologist Surjit Kahlon evaluated Plaintiff. [AR 22 (citing AR 968-71).] Plaintiff exhibited 4+ to 5/5 motor strength on the right side, "weak" left grip, decreased reflexes in all extremities, withdrawn plantars, and "somewhat decreased" and "somewhat inconsistent" sensation. [AR 22 (citing AR 969).] The strength findings of "5/5 throughout" were at least somewhat inconsistent with Plaintiff's claims in the March 2020 Exertion Questionnaire that she could lift "nothing heavy" [AR 382] and the December 2020 Exertion Questionnaire that someone went shopping with her so that she was "not carrying anything heavy" [AR 397]. Moreover, the reduced grip-strength findings do not diminish that inconsistency:



1 Grip strength is not synonymous with lifting ability. Grip strength  
2 measures the force grip of a hand and represents the power of squeezing  
3 between the thumb and fingers. Lifting involves picking up a load with the  
4 legs, arms, and torso. *Hope v. Astrue*, No. ED CV 10-93 PJW., 2011 WL  
5 2135054, at \*1 (C.D. Cal. May 31, 2011) (citations omitted); *see also*  
6 *Bauslaugh v. Astrue*, No. EDCV 09-1853-MLG., 2010 WL 1875800, at \*5 (C.D.  
7 Cal. May 11, 2010) (noting that “[l]ifting and carrying is defined by the Social  
8 Security Regulations as an exertional limitation, while fingering and grasping  
9 is a nonexertional limitation. Thus, under the Regulations, the ability to grip  
10 and grasp is not related to the ability to lift and carry”).

11 The ALJ noted that although a slow gait was observed by Dr. Lim and  
12 in the physical-therapy records, “persistent gait abnormalities [we]re not  
13 documented elsewhere in the medical record.” [AR 23.] Indeed, Plaintiff was  
14 often noted to have a “normal gait.” [See AR 696 (Aug. 2021), 700 (May 2021),  
15 704 (Apr. 2021), 1185 (Nov. 2021), 1182 (Feb. 2022).] These normal gait  
16 findings are inconsistent with Plaintiff’s claim in her December 2020 Exertion  
17 Questionnaire that her diabetic neuropathy caused gait problems. [AR 396.]

18 For all these reasons, the ALJ properly partially discounted Plaintiff’s  
19 subjective symptom statements and testimony concerning her diabetic  
20 neuropathy because they were at least in part inconsistent with the objective  
21 medical evidence. *See Brown-Hunter*, 806 F.3d at 493; *Kitchen*, 82 F.4th at  
22 739. Moreover, any error was harmless because as explained below, the ALJ  
23 gave three other valid reasons for discounting Plaintiff’s subjective symptom  
24 statements and testimony. *See Howland v. Saul*, 804 F. App’x 467, 470-71  
25 (9th Cir. 2020) (holding that ALJ’s error in relying on claimant’s daily  
26 activities to discount her subjective symptom testimony was harmless because  
27 ALJ offered other specific, clear, and convincing reasons for doing so). *Id.*  
28

**b) Conservative Treatment**

Routine, conservative treatment can be enough to discount a claimant's subjective testimony regarding the limitations caused by an impairment. *Parra v. Astrue*, 481 F.3d 742, 750-51 (9th Cir. 2007). Not seeking an "aggressive treatment program" permits the inference that symptoms were not "as all-disabling" as the claimant reported. *Tommasetti v. Astrue*, 533 F.3d 1035, 1039 (9th Cir. 2008). The amount of treatment is "an important indicator of the intensity and persistence of [a claimant's] symptoms." §§ 404.1529(c)(3), 416.929(c)(3). If, however, the claimant has a good reason for not seeking more aggressive treatment, conservative treatment is not a proper basis for rejecting the claimant's subjective symptoms. *Carmickle*, 533 F.3d at 1162.

The ALJ noted that although electrodiagnostic studies in June 2021 "suggested sensory neuropathy," Plaintiff's neurologist recommended only that Plaintiff "follow up" with pain management and see the neurologist "as needed." [AR 22 (citing AR 989-90).] Nothing shows that Plaintiff sought treatment for sensory neuropathy after July 2021, as Defendant notes [Dkt. No. 19 at 11], or that she had a good reason for not doing so in light of her claim that her neuropathy was disabling. Therefore, the ALJ did not err in discounting Plaintiff's subjective symptom statements and testimony as inconsistent with her conservative treatment for her diabetic neuropathy..

**c) Noncompliance with prescribed treatment**

An ALJ may rely on an "unexplained or inadequately explained failure to seek treatment or to follow a prescribed course of treatment." *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014). The ALJ noted that medical records showed compliance issues with Plaintiff's diabetes treatment [AR 22-23 (citing AR 581, 1060, 1066, 1071, 1079)], suggesting that her symptoms were not particularly bothersome. Despite her complaints of disabling pain,

1 Plaintiff specifically declined pain-management injections from her pain-  
2 management physician. [AR 23 (citing AR 666, 671).] She has offered no  
3 explanation, much less an adequate one, for failing to follow her prescribed  
4 course of treatment. Therefore, the ALJ did not err in considering this failure  
5 in discounting her subjective symptom statements and testimony. *Ghanim*,  
6 763 F.3d at 1163.

7 **d) Improvement with treatment**

8 Next, the ALJ properly considered that Plaintiff's conditions were  
9 controlled or responsive to treatment. [AR 23]; see *Wellington v. Berryhill*, 878  
10 F.3d 867, 876 (9th Cir. 2017) (“[E]vidence of medical treatment successfully  
11 relieving symptoms can undermine a claim of disability.”); *Presley-Carrillo v.*  
12 *Berryhill*, 692 F. App'x 941, 945 (9th Cir. 2017) (upholding discounting of  
13 claimant's testimony concerning disabling nature of symptoms when it  
14 conflicted with effective treatment). Plaintiff's A1C level was at goal within  
15 six months of an initial endocrinology consultation, as the ALJ noted. [AR 23  
16 (citing AR 1016, 1022, 1113, 1124).] And Plaintiff's neurologist found that  
17 physical and occupational therapy “helped a lot” with Plaintiff's symptoms,  
18 although she remained symptomatic. [Id. (citing AR 695).] Physical therapy  
19 records also indicated improvement. [Id. (citing AR 839-42, 901, 1123).]

20 Further, the ALJ specifically noted that gait improvement was observed  
21 in the physical therapy records. [Id. (citing AR 838, 878).] Plaintiff argues  
22 that “while [her] gait improved during therapy, it was still 75% of normal at  
23 the time of discharge from the program.” [Dkt. No. 12 at 18.] But even 75  
24 percent of normal was inconsistent with the statements in Plaintiff's  
25 December 27, 2020 Exertion Questionnaire that she needed to “use a cane to  
26 walk around” so she didn't “fall and lose [her] balance” [AR 396] and “use[d]  
27 the basket for support” at stores [id.]. It was also inconsistent with the  
28 statement in Plaintiff's March 4, 2021 Disability Report that she couldn't go

1 for walks anymore because she was “afraid to fall or loose [sic] balance.” [AR  
2 415.] And as noted, Plaintiff was often found to have a “normal gait,”  
3 including during the latter part of the relevant period. [See AR 696 (Aug.  
4 2021), 700 (May 2021), 704 (Apr. 2021), 1185 (Nov. 2021), 1182 (Feb. 2022).]  
5 Therefore, the ALJ did not err in discounting Plaintiff’s subjective symptom  
6 statements and testimony concerning her diabetic neuropathy based on her  
7 improvement with treatment.

8 For all these reasons, the ALJ properly evaluated Plaintiff’s subjective  
9 symptom statements and testimony concerning her diabetic neuropathy.

10 **D. The ALJ Properly Resolved an Apparent Conflict Between**  
11 **the VE’s Testimony and the Dictionary of Occupational**  
12 **Titles**

13 Plaintiff argues that the ALJ erred in failing to resolve an apparent  
14 conflict between the VE’s testimony that a “person limited to occasional  
15 reaching with the left upper extremity could perform work as a photographer”  
16 and the “DOT[s] desc[ription of the] occupation.” [Dkt. No. 12 at 19.] For the  
17 reasons discussed below, the ALJ did not err.

18 **1. Applicable law**

19 The photographer job requires reaching “[f]requently,” or “from 1/3 to  
20 2/3 of the time.” See DOT 143.062-030, 1991 WL 647131 (Jan. 1, 2016).

21 “When there is an apparent conflict between the vocational expert’s  
22 testimony and the DOT — for example, expert testimony that a claimant can  
23 perform an occupation involving DOT requirements that appear more than  
24 the claimant can handle — the ALJ is required to reconcile the inconsistency.”  
25 *Lamear v. Berryhill*, 865 F.3d 1201, 1206 (9th Cir. 2017) (citation omitted).

26 [N]ot all potential conflicts between an expert’s job suitability  
27 recommendation and the [DOT’s] listing of maximum  
28 requirements for an occupation will be apparent or obvious. [A]n  
ALJ need only follow up on those that are.

1 *Gutierrez v. Colvin*, 844 F.3d 804, 807-08 (9th Cir. 2016) (citation  
2 omitted).

3 **2. The VE's testimony**

4 At the May 2022 hearing, the ALJ questioned the VE as follows:

5 Q. . . . If we assume a hypothetical person who was 48  
6 years old at her alleged onset date, has some college education, is  
7 literate, speaks English, and can perform the demands of work  
8 within the following RFC. She can lift and/or carry 20 pounds  
9 occasionally, 10 pounds frequently. She can do frequent reaching,  
10 handling, fingering, feeling, pushing, and pulling with the right  
11 dominant upper extremity. She can occasionally use the left hand  
12 for reaching, pushing, and pulling, but can frequently use the left  
13 hand for handling, fingering, and feeling. She can do occasional  
14 foot pedals bilaterally. She can occasionally climb ramps and  
stairs, ladders, ropes, and scaffolds. She can occasionally crouch,  
but can frequently stoop, kneel, crouch, and crawl. She can stand,  
walk, and or sit six hours out of an eight-hour day each. Could  
this person do [Plaintiff's] past-relevant work [as a  
photographer]?

15 A. Yes.

16 Q. And that'd be both per the DOT and as actually  
performed?

17 A. That's correct, Judge, yes.

18 Q. And the disparity in the reaching, handling, and  
19 fingering between the right and left upper extremity is more per  
your own experience than [sic] per the DOT because the DOT does  
20 not make that distinction. Is that correct?

21 A. That's correct. And based on what you told me, and  
22 then combining that with my professional experiences, I felt  
there'd be no impact on doing their past — usual and customary  
work.

23 [AR 48-49.]

24 **3. The ALJ's decision**

25 The ALJ found that Plaintiff could perform her past relevant work as a  
26 photographer:

27 After comparing [Plaintiff's] residual functional capacity with the  
28 physical and mental demands of this work, and based on the

1 vocational expert's testimony, the undersigned finds that  
2 [Plaintiff] is able to perform it as actually and generally  
3 performed.

4 The vocational expert confirmed that the DOT does not  
5 distinguish right from left with respect to reaching, handling, and  
6 fingering requirements and that his testimony regarding this  
7 subject reflected his professional experience. Pursuant to SSR 00-  
8 4p, the undersigned relies on the vocational expert's documented  
9 qualifications in accepting this testimony.

10 [AR 24.]

#### 11 4. Analysis

12 The ALJ recognized an apparent conflict between the VE's testimony  
13 and the DOT because she directly questioned the VE about the "disparity"  
14 between the reaching, handling, and fingering abilities with the right versus  
15 the left upper extremity. [AR 48-49.] And the VE testified that based on  
16 "what [the ALJ] told [him] combin[ed] with [the VE's] professional  
17 experiences," there would be "no impact on doing" the photographer job. [AR  
18 49.] In her decision, the ALJ noted the VE's explanation of the apparent  
19 conflict and "[p]ursuant to SSR 00-4p," expressly "relie[d] on the vocational  
20 expert's documented qualifications in accepting this testimony." [AR 24.] The  
21 ALJ reasonably relied on the VE's expertise and experience. *Biestek*, 587 U.S.  
22 at 105 (VE's "testimony may count as substantial evidence even when  
23 unaccompanied by supporting data"); *Bayliss v. Barnhart*, 427 F.3d 1211,  
24 1218 (9th Cir. 2005) ("An ALJ may take administrative notice of any reliable  
25 job information, including information provided by a VE."). The VE had over  
26 40 years of experience as a vocational consultant and counselor [AR 449-51],  
27 and Plaintiff did not object to his qualifications to testify [AR 46-47] or to that  
28 specific testimony [see AR 48-49]. The DOT description of the photographer  
job doesn't state whether the frequent reaching involved can be done  
primarily with one hand, as the VE acknowledged. [Id.] But the VE testified  
that it could, based on his education and vocational-consulting experience.



1 [Id.] The ALJ reasonably relied on this expertise. *Biestek*, 587 U.S. at 105;  
2 Bayliss, 427 F.3d at 1218.

3 Plaintiff is incorrect that *Lamear* requires a different result. In  
4 *Lamear*, a VE testified that the plaintiff, who could only occasionally handle,  
5 finger, and reach with his nondominant hand, could perform the jobs of office  
6 helper, mail clerk, and parking-lot cashier, all of which required frequent  
7 handling, fingering, and reaching. 865 F.3d at 1203. The ALJ did not ask the  
8 VE to reconcile any potential conflict, and the VE did not offer any  
9 explanation. *Id.* at 1204. The Ninth Circuit concluded that the ALJ's failure  
10 to ask the VE about the conflict was reversible error because it could not  
11 determine from the record whether the jobs in question required use of both  
12 hands on a frequent basis. *Id.* at 1206-07. In contrast, here the ALJ asked  
13 the VE about the potential conflict, and the VE resolved it based on his  
14 expertise.

15 Importantly, Plaintiff's counsel had an opportunity to cross-examine the  
16 vocational expert on this issue. Indeed, counsel questioned the VE on other  
17 issues but did not raise any perceived inconsistencies between the VE's  
18 testimony and the reaching requirements in the DOT job description. [AR 51-  
19 52]; see *Solorzano v. Astrue*, No. ED CV 11-369-PJW., 2012 WL 84527, at \*6  
20 (C.D. Cal. Jan. 10, 2012) ("[Counsel] have an obligation to take an active role  
21 and to raise issues that may impact the ALJ's decision while the hearing is  
22 proceeding so that they can be addressed."). The ALJ was therefore entitled  
23 to rely on the vocational expert's testimony. See *Solorzano*, 2012 WL 84527,  
24 at \*6 ("Counsel are not supposed to be potted plants at administrative  
25 hearings."). The ALJ did not err.  
26  
27  
28

1 **IV. CONCLUSION**

2 Consistent with the foregoing and under sentence four of 42 U.S.C.  
3 § 405(g), IT IS ORDERED that judgment be entered AFFIRMING  
4 the Acting Commissioner's decision, DENYING Plaintiff's request for  
5 remand, and DISMISSING this action with prejudice.  
6

7 DATED: March 20, 2025



8  
9 PATRICIA DONAHUE  
10 United States Magistrate Judge  
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